

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA

JUSTIN GARDNER,

Plaintiff,

vs.

STATE OF NEBRASKA, KIMBERLY MILLER PANKONIN, DOUGLAS A. JOHNSON, MARLON A. POLK, and MATTHEW J. MILLER,

Defendants.

8:17CV391

ORDER

This matter is before the court on its own motion. Plaintiff filed a Notice of Appeal ([filing no. 21](#)) on May 29, 2018. On May 30, 2018, the court entered an order requiring Plaintiff to either file a motion for leave to proceed in forma pauperis (IFP) or pay the \$505 filing and docket fees. ([Filing No. 23](#).) The court's May 30, 2018 order was entered in error as Plaintiff had previously been granted leave to proceed IFP in this action on November 13, 2017, and he may proceed IFP on appeal without further authorization. [Fed. R. App. P. 24\(a\)\(3\)](#).

The Prison Litigation Reform Act ("PLRA") requires prisoner plaintiffs to pay the full amount of the court's \$505.00 appellate filing fee by making monthly payments to the court, even if the prisoner is proceeding in forma pauperis. [28 U.S.C. § 1915\(b\)](#). The PLRA "makes prisoners responsible for their filing fees the moment the prisoner brings a civil action or files an appeal." [Jackson v. N.P. Dodge Realty Co.](#), 173 F. Supp. 2d 951, 952 (D. Neb. 2001) (citing [In re Tyler](#), 110 F.3d 528, 529–30 (8th Cir. 1997)). The appellate filing fee is assessed when the district court receives the prisoner's notice of appeal. [Henderson v. Norris](#), 129 F.3d 481, 485 (8th Cir. 1997).

Plaintiff must pay an initial partial filing fee in the amount of 20 percent of the greater of Plaintiff's average monthly account balance or average monthly deposits for the six months preceding the filing of the notice of appeal. *See 28 U.S.C. § 1915(b)(1)*. In order to calculate Plaintiff's initial partial filing fee, the court requires an updated trust account statement from Plaintiff's institution. Accordingly,

IT IS ORDERED that:

1. The court's May 30, 2018 Order ([filing no. 23](#)) is vacated. Plaintiff may proceed in forma pauperis on appeal without further authorization.
2. The clerk's office is directed to request a certified trust account statement from Plaintiff's institution.¹
3. The clerk's office is directed to send a copy of this order to the Eighth Circuit Court of Appeals.

Dated this 15th day of June, 2018.

BY THE COURT:

s/ Richard G. Kopf
Senior United States District Judge

¹ The clerk's office requested a certified trust account statement from Plaintiff's institution on June 1, 2018, in a separate action filed by Plaintiff. (*See Filing No. 4*, Case No. 18CV241.) In the interest of judicial economy, upon receipt of the trust account statement in 18CV241, the clerk's office may file the same in the present case in lieu of sending another request.